UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,285

DIANA KEARNY POWELL, *Appellant*,

v.

NICHOLAS KATZENBACH,
United States Attorney General, *Appellee*

Appeal from the United States District Court
for the District of Columbia

Decided December 2, 1965

Miss Diana Kearny Powell, appellant *pro se*.

Mr. John C. Eldridge, Attorney, Department of Justice, with whom *Assistant Attorney General Douglas, Mr. David C. Acheson*, United States Attorney at the time the brief was filed, and *Mr. Alan S. Rosenthal*, Attorney, Department of Justice, were on the brief, submitted on the brief for appellee.

Before BAZELON, Chief Judge, and WASHINGTON and WRIGHT, Circuit judges.

PER CURIAM: Appellant brought an action in the nature of mandamus against the Attorney General of the United States in order to force prosecution of a national bank and certain persons who appellant alleges were parties to a conspiracy in violation of various sections of Title 18 of the United States Code. Upon motion of appellee, the District Court struck two paragraphs of the complaint under Rule 12(f) of the Federal Rules of Civil Procedure, and dismissed with prejudice the remainder of the complaint for failure to state a cause of action. This appeal followed.

It is well settled that the question of whether and when prosecution is to be instituted is within the discretion of

the Attorney General. Mandamus will not lie to control the exercise of this discretion. E.g., *Confiscation Cases,* 74 U.S. (7 Wall.) 454 (1868); *Moses* v. *Katzenbach,* 119 U.S.App.D.C. 352, 342 F.2d 931 (1965), affirming sub nom. *Moses* v. *Kennedy,* 219 F.Supp. 762 (D.D.C. 1963); *Goldberg* v. *Hoffman,* 225 F.2d 463 (7th Cir. 1955); *Pugach* v. *Klein,* 193 F.Supp. 630 (S.D.N.Y. 1961); *United States* v. *Brokaw,* 60 F.Supp. 100 (S.D. Ill. 1945). We will assume, without deciding, that where Congress has withdrawn all discretion from the prosecutor by special legislation, a court might be empowered to force prosecutions in some circumstances. Cf., e.g., *Moses* v. *Kennedy,* 219 F.Supp. at 765; Note, 74 YALE L.J. 1297 (1965). Appellant cites 68 STAT. 998 (1954), 5 U.S.C. § 311a (1958), as such a statute. However, the language of that provision and its legislative history fail to disclose a congressional intent to alter the traditional scope of the prosecutor's discretion. The complaint in its entirety fails to state a cause of action, and we thus need not reach the issue as to whether the striking of two of its paragraphs was warranted. Accordingly, the judgment of the District Court is

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,547

DIANA KEARNY POWELL, *Appellant*,

v.

HENRY H. PAIGE AND JOHN E. POWELL, *Appellees*

Appeal from the United States District Court
for the District of Columbia

Decided December 9, 1965

Miss Diana Kearny Powell, appellant *pro se*.

Mr. Albert E. Brault for appellees.

Before BURGER, WRIGHT and LEVENTHAL, *Circuit Judges*.

PER CURIAM: The issues raised by this appeal have been before this court in one form or another on several occasions. See *Powell* v. *National Savings and Trust Company*, 111 U.S.App.D.C. 290, 296 F.2d 412, *cert. denied*, 368 U.S. 946 (1961), *rehearing denied*, 368 U.S. 1005 (1962); *Powell* v. *National Savings & Trust Co.*, 114 U.S.App.D.C. 269, 314 F.2d 274 (1963), *cert. denied*, 379 U.S. 920 (1964), *rehearing denied*, 379 U.S. 984 (1965); *Powell* v. *National Savings and Trust Company*, No. 17,658, decided November 19, 1963, *rehearing en banc denied*, January 15, 1964; *Powell* v. *National Savings and Trust Company*, No. 18,292, decided May 19, 1964, *cert. denied*, 379 U.S. 920 (1965). We have carefully considered the record, the briefs and the oral argument of appellant. We find nothing new contained therein which would require a reversal of the District Court's judgment in this case.

Affirmed.